

Internal Revenue Service

Number: **200927029**

Release Date: 7/2/2009

Department of the Treasury

Washington, DC 20224

Index Number: 1362.00-00, 1362.04-00

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-148100-08

Date:

March 31, 2009

Legend

X =

A =

B =

Trust1 =

Trust2 =

Trust3 =

State =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Date7 =

Date8 =

a =

b =

Dear _____ :

This responds to a letter dated November 5, 2008, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under §1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State1 on Date1, and elected to be an S corporation effective Date2.

On or about Date3, A established Trust1. On Date4 and Date5, A contributed shares of X stock to Trust1. A died on Date6. Upon the death of A, Trust2 and Trust3 were established pursuant to the trust agreement (including amendments) for Trust1, and the X stock held by Trust1 was divided and transferred to Trust2 and Trust3 on Date7. After the transfers of X stock to Trust2 and Trust3, Trust2 owned a percent of the outstanding shares of X, and Trust3 owned b percent of the outstanding shares of X. B, the surviving spouse of A, was the current income beneficiary of Trust2 and Trust3 until B's death. B died on Date8.

X represents that, prior to A's death on Date6, Trust1 was a trust described in § 1361(c)(2)(A)(i). X further represents that between Date6 and Date7, Trust1 was a trust described in § 1361(c)(2)(A)(ii). X also represents that Trust2 and Trust3 met the requirements to be treated as qualified subchapter S trusts (QSSTs) as described in § 1361(d) from Date7 until the death of B on Date8, except that B failed to make the required elections under § 1361(d)(2). Therefore, Trust2 and Trust3 were not eligible S corporation shareholders beginning on Date7. As a result, X's S corporation election terminated on Date7.

X represents that X and X's shareholders have filed tax returns consistent with X being an S corporation. X also represents that all of the income with respect to the stock of X held by Trust2 and Trust3 has been consistently reported by B on B's

individual federal tax returns as if the QSST elections for Trust2 and Trust3 had been in effect since Date7. X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and each person who was or is a shareholder of X at any time since Date7 agree to make any adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary with respect to such period.

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that a "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. A termination of an S corporation election under § 1362(d)(2) is effective on or after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation is a small business corporation; and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified under § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary for that period, then, notwithstanding the circumstances resulting in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date7 resulting from the failure of B, as the current income beneficiary of Trust2 and Trust3, to make the required elections under § 1361(d)(2). We further conclude that the termination was inadvertent within the meaning of § 1362(f). In addition, we conclude that, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date7 and thereafter, provided that

Trust2 and Trust3 qualify as QSSTs and X's election to be an S corporation was otherwise valid and was not terminated under § 1362(d) for other reasons.

Accordingly, the shareholders of X must include in income their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. For this purpose, B shall be treated as the shareholder of X with respect to the stock of X held by Trust2 and Trust3 for the period beginning Date7 until Date8. If X or its shareholders fail to treat X as described above, this letter ruling shall be null and void.

This ruling is conditioned on B's personal representative or the administrator of B's estate filing QSST elections under § 1361(d)(2) with respect to Trust2 and Trust3, effective Date7, with the appropriate service center within 60 days from the date of this letter. A copy of this letter should be attached to the QSST elections.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was or is a small business corporation under § 1361(b); whether Trust1 was a trust described in § 1361(c)(2)(A)(i) prior to Date6; whether Trust1 was a trust described in § 1361(c)(2)(A)(ii) for the period beginning Date6 until Date7; or whether Trust2 and Trust3 qualified as QSSTs within the meaning of § 1361(d)(3) for the period beginning Date7 until Date8. In addition, no opinion is expressed regarding the valuation of any of the assets includible in B's gross estate.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, copies of this letter are being sent to X's authorized representatives.

Sincerely,

Melissa C. Liquerman
Branch Chief, Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: